

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHNATHAN LYNN MANNING,

Plaintiff,

v.

Civ. No. 24-0472-KG-LF

ALISHA TAFOYA, *et al*,

Defendants.

ORDER OF VOLUNTARY DISMISSAL

This matter comes before the Court on Plaintiff's *pro se* Motion to Voluntarily Dismiss Case. (Doc. 6) (Motion). Plaintiff filed the Motion in response to the Order directing him to file an inmate account statement in his prisoner civil rights action. (Doc. 5). In the Motion, Plaintiff seeks to dismiss his Civil Complaint (Doc. 2) under Fed. R. Civ. P. 42. (Doc. 6) at 1. The Court discerns Plaintiff intends to invoke Fed. R. Civ. P. 41(a), which governs voluntary dismissal in civil cases. Fed. R. Civ. P. 41(a) gives plaintiffs an absolute right to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(A)(i). *See also Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003) (The rule grants "an absolute right to dismiss without prejudice").

This prisoner *pro se* case is still in the screening phase. *See* 28 U.S.C. § 1915A (requiring *sua sponte* screening of prisoner cases where, as here, the complaint names a government official). Defendants have not yet been served, nor have they filed any pleading. Hence, the Court will dismiss the Civil Complaint (Doc. 1) without prejudice to refile. The Court will also deny Plaintiff's pending Motion to Proceed *In Forma Pauperis* (Doc. 3), which is

now moot.

IT IS ORDERED:

1. The Motion to Voluntarily Dismiss Case (Doc. 6) is granted.
2. Plaintiff's Prisoner Civil Complaint (Doc. 2) is dismissed without prejudice.
3. The Motion to Proceed *In Forma Pauperis* (Doc. 3) is denied as moot.
4. The Court will enter a final judgment closing this civil case.


UNITED STATES DISTRICT JUDGE